

The News Corporation Limited

5151 Wisconsin Avenue, NW, Washington, DC 20016 • (202) 895-3269

Peggy K. Binzel
Vice President
Government Relations

EX PARTE OR LATE FILED

RECEIVED

NOV 10 1994

FCC MAIL ROOM

November 4, 1994

Mr. William Canton, Acting Secretary
The Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: Ex Parte Letter, MM Docket No. 92-266

DOCKET FILE COPY ORIGINAL

Dear Mr. Canton:

Pursuant to Section 1.1206 (a) of the Commission's rules, this is to provide notice that the attached letter from Anne Sweeney, Chairman & CEO, fX, was sent to Chairman Reed Hundt, Commissioner James Quello, Commissioner Barrett, Commissioner Chong, Commissioner Ness, Meredith Jones, Kathleen Wallman, William Johnson, William Kennard, Blair Levin, Merrill Spiegel, Lauren Belvin, Maureen O'Connell, Byron Marchant, Lisa Smith, James Coltharp, Jane Mago, Jill Luckett, James Casserly, David Siddall and Mary McManus.

Sincerely,


Peggy Binzel

PKB\jmd

No. of Copies rec'd 0
List A B C D E

FAX: (202) 895-3193



P.O. Box 900

Beverly Hills, California 90211-0900

Phone 310 201 3474 • Fax 310 201 2452

RECEIVED

NOV 10 1994

Anne M. Sweeney

Chairman and

Chief Executive Officer

October 21, 1994

FCC MAIL ROOM

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

I write with the greatest possible alarm regarding the Commission's reported imminent decision on a two year "going forward" proposal for new cable program service incentives.

Under your proposal, cable operators will be incented to add to regulated tiers only free services or services of little value. This is true because the price-value calculation which an operator normally would employ in selecting new services has been skewed by the recent FCC-ordered rate cuts. Therefore the goal of recouping lost revenues will drive operators to maximize the incentive mark-up portion of the overall cap. The proposal will also insulate entrenched (mostly vertically integrated) program services from competition from new services like fX that are willing to invest heavily in strong programming and fight aggressively for berths in wide circulation regulated tiers.

I do realize that other priorities may require you to be indifferent to these consequences. However, it is absolutely clear that your proposal will make it virtually impossible for new services like fX to compete for widespread distribution on regulated cable tiers. The precarious (and ironic) position we now find ourselves in is that the Commission's proposal reduces our ability to effectively compete in the future yet it was the Commission's extraordinary help last May which originally facilitated our launch. Under the pending proposal we will be unable to effectively compete with the dominant, entrenched and widely distributed services despite our programming commitment of over \$100 million annually including seven hours a day of original programming. The entrenched services may not like other portions of your proposal, but I am quite sure that they will be grateful for the Commission's unintended help in eliminating the threat of competition.

No one -- not Fox, not anyone -- can hope to compete with the widely circulated, mainstream basic services from lower circulation slots on higher tiers which are better served by the niche services. It is impossible to overstate the anti-competitive

The Honorable Reed E. Hundt
October 21, 1994
... 2

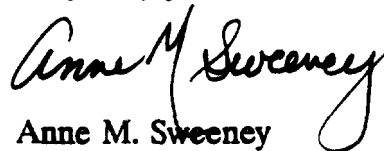
consequences of an artificial and governmentally created world of program service "haves" and "have nots."

At this late hour, and given all of the conflicting pressure upon you, we have only two specific and urgent pleas. First, it is absolutely critical that the Commission permit at least some modicum of migration from regulated tiers to a-la-carte tiers so that new services have a realistic chance (however slim) to fight their way into basic. As a corollary benefit, entrenched services would be incented to stay fresh and to continue putting value on the screen.

Second, the pending proposal should be amended so that the \$1.50 cap is split between 80¢ for mark-up and 70¢ for actual program fees. This more equitable split between programming and mark-up will ensure that consumers receive the highest quality programming for their money. If this amendment is not acceptable, please allow an increase of 50¢ in the overall cap (to a total of \$2.00) if, and only if, the additional 50¢ is allocated solely for program service license fees.

This modest change in your proposal would eliminate the regulatory bias in favor of services that are free or of little value and would give services like fX a least a chance to fight for distribution. Combined with a limited amount of migration, (e.g. two services over two years) the unintended anti-consumer and anti-competitive aspects of the proposal would be substantially reduced.

Very truly yours,


Anne M. Sweeney

cc: The Honorable James H. Quello
The Honorable Andrew C. Barrett
The Honorable Rachelle B. Chong
The Honorable Susan Ness
Meredith Jones, Esq.
Kathleen M.H. Wallman, Esq.
William H. Johnson, Esq.
William E. Kennard, Esq.
Blair Levin, Esq.
Merrill Spiegel, Esq.

The Honorable Reed E. Hundt
October 21, 1994
... 3

Lauren J. Belvin, Esq.
Maureen O'Connell, Esq.
Byron F. Marchant, Esq.
Lisa B. Smith, Esq.
James R. Coltharp, Esq.
Jane Mago, Esq.
Jill Lockett, Esq.
James L. Casserly, Esq.
David A. Siddall, Esq.
Mary P. McManus, Esq.